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Held at the Palais des Nations, Geneva,
on Thursday, 2 May 1996, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.249/Add.1.

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7)(continued)

Second periodic report of Finland (CAT/C/25/Add.7; HRI/CORE/1/Add.59)

1. At the invitation of the Chairman, Mr. Lång, Mr. Velthein, Mr. Lehmus, Mr. Sintonen, Ms. Salojärvi and Ms. Mohell (Finland) took seat at the Committee table.

2. Mr. LÅNG (Finland), introducing his country's report (CAT/C/25/Add.7), said that, as Director-General at the Ministry of Justice for many years, he felt personally responsible for the implementation of the Convention in his country. The size of the Finnish delegation was evidence of his country's interest in the Committee's work and the importance Finland attached to its observations.

3. The situation had changed greatly in Finland over the past two years, particularly in the legislative field. The Constitution contained a new chapter on civil and political rights, dealing with the question of punishment in general and capital punishment in particular, new legislation on prison administration and functioning had entered into force in 1995 and the police had recently been brought under new regulations. The first reason for the changes was that Finland intended scrupulously to discharge all its obligations as a member of the Council of Europe. The second was that much of the relevant legislation had become outdated and needed to be revised; account had to be taken of developments such as the economic recession, which meant that it was not possible to lay as much emphasis as before on productive work by prisoners, in so far as 80 per cent had been unemployed before their imprisonment and would return to being unemployed on release. Work should no longer be regarded as an absolute good, but that was difficult to achieve in a society whose judicial system had always been based on the work ethic.

4. Finland's second periodic report, as well as describing legislative and other changes in Finland, attempted to answer the questions raised during the consideration of the initial report, in November 1990. Among the subjects covered were the procedure for incorporating international instruments in Finnish legislation and the division of duties between the Chancellor of Justice and the Parliamentary Ombudsman.

5. With regard to the implementation of article 4 of the Convention, the report detailed the changes made to the Finnish Constitution in connection with civil and political rights. Quoting section 6 of the amended Constitution, he said that the provisions of the section had been incorporated in the legislation adopted by parliament, particularly those relating to prisons, to arrest in connection with criminal inquiries and to the treatment of the mentally-ill in hospitals.

6. Finland's initial report and paragraphs 12 to 19 of its second report outlined the measures taken against torture in Finland. The new provisions, which had become effective in September 1995, dealt with various forms of assault, ranging from petty assault, which was punishable by a fine, to

aggravated assault, which could carry a 10-year prison sentence. The provisions were worded in such a way that they were in all cases applicable to torture, including psychological torture.

7. A government bill on the reform of the scope of application of the Penal Code of Finland had been introduced in February 1996, proposing that chapter 1 should be amended so as to make Finnish law applicable to all offences committed outside Finland and punishable without regard to the law of the place of commission. It had been suggested that a decree containing an exhaustive list of international offences - including torture - subject to the principle of universality should be added to the provision. Prosecution for an international offence committed abroad would still require an order for prosecution by the Chancellor of Justice. Generally, the scope of application of the Penal Code would be increased to enable Finland to honour its international obligations, for example by participating in the work of the International Tribunal for the Prosecution of Persons Responsible for Crimes Committed in the Territory of the Former Yugoslavia.

8. The Act on International Legal Assistance in Criminal Matters, which had become effective in January 1994, laid down that Finland should provide legal assistance at the request of foreign authorities, regardless of whether the two countries had concluded a treaty to that effect. A provision had been added to section 7 of the Constitution, stating that a foreigner should not be expelled, extradited or returned to an area where he or she was in danger of being subjected to capital punishment, torture or other degrading treatment, nor to a third country from which he or she might be sent to an area where such dangers existed.

9. With regard to article 10 of the Convention, basic training on human rights and fundamental rights, as well as the objectives of the enforcement of punishment, were taught at the Prison Personnel Training Centre. In recent years, the report of the Council of Europe Committee for the Prevention of Torture had been used in training. The Prison Administration Centre had also organized a seminar on "Human rights in prison administration" and the Prison Department had organized courses on international human rights. In the training of police officers, the civil rights and human rights secured by international conventions were discussed systematically. In discussions of human rights and civil rights, special attention was paid to the new regulations concerning basic rights. Human rights and civil and political rights formed a part of all courses at the Police Academy and teachers at the Academy participated in international seminars on human rights.

10. In May 1995, the provisions relating to the treatment of prisoners had been transferred from the Prison Administration Decree to the Act on the Enforcement of Sentences, which stated that prisoners should be treated with justice and respect for their human dignity. Chapter 1, section 3, of the Act stipulated that the imprisonment should be the only punishment. Other restrictions could be used only to the extent required to ensure the certainty of imprisonment and the order of the institution. The Act also provided that the prisoner should be heard whenever a decision was made concerning his or her living or work or transfer to another prison, for example. Discrimination of any kind was forbidden and a long list of reasons was given that could not be used as a basis for any special treatment. In connection with the reform,

other provisions concerned prisoners' correspondence and the use of telephones. Correspondence between a prisoner and a supervisory authority or any body monitoring human rights should be delivered without delay and uncensored. Similarly, a prisoner could write to an international body, such as the Committee against Torture, with the assurance that the letter would be delivered unread. In the same context, provisions concerning the searching and physical examination of prisoners had been defined.

11. The prisoners' earlier obligation to work had been broadened to an obligation to participate in work, training or other activity that improved their ability to live and work in society. Considerable efforts had been made to increase such activities, which aimed at improving prisoners' physical, mental or social abilities.

12. Regulations had been issued in February 1994 on the treatment of persons under 18 years of age, due account being taken of article 37 (c) of the United Nations Convention on the Rights of the Child. The possibility of transferring prisoners from a prison to an open institution had been broadened in May 1995 and, as the matter concerned minors, the transfers were carried out in each case in accordance with their interests. The number of prisoners under eighteen was so low in Finland (six in the summer of 1995 and nine at the present time) that it was difficult to organize special programmes for them. However, everything was being done to serve their interests to the greatest extent possible.

13. A new decree on prison administration contained instructions and more detailed procedures concerning the treatment of prisoners. A new provision concerning foreign prisoners stated that any prisoner who was not a Finnish national had the possibility of contacting his country's diplomatic or consular mission.

14. The report dealt with the question of the system of incarceration of dangerous recidivists. It would perhaps be preferable, in the English version, to use the word "internment". It concerned rare cases: at the present time, some 40 persons were imprisoned for life for murder, while 15 others were under the special incarceration regime, which could at any time be replaced by a specific period of time. In reality, it was no longer possible to speak of an indefinite regime, since for the past 2 years, the Prison Court had always decided to release the prisoners once they had served their entire sentence. The system had been accepted in Europe as being in conformity with the law, but in any event, it was planned to be replaced in time by another procedure.

15. The Police Act and the Police Personal Data File Act, which had become effective in 1995, had been written bearing in mind the human rights conventions and other international obligations binding on Finland. Under those new provisions, the police had to administer justice impartially and promote a conciliatory atmosphere. It must not damage or harm the rights of any person to a greater extent than was necessary to discharge its duties. The powers of the police and the guarantees of the legal protection of citizens were described in as detailed a manner as possible. With regard to inquiries relating to allegations of police criminality, a reform which would become effective in December 1996 would ensure that the prosecutor entrusted

with the investigation would be independent of the police administration. The Ministry of Justice was also preparing a text that would combine the offices of the provincial intermediaries and the office of the highest prosecutor into one national prosecutor's bureau that could become the leading authority in charge of investigations concerning police criminality. A decision of principle had already been made on the issue, and the Minister of the Interior had already drafted a circular for the police services informing them that those matters should be entrusted to the independent prosecutors whenever the latter were already in place.

16. The new legislation provided that the Chancellor of Justice and the Parliamentary Ombudsman had the specific task of defending civil and human rights. It should be stressed that, in keeping with Finnish tradition, those two figures enjoyed very high status which guaranteed their impartiality. He knew from experience that it was best to take seriously the demands for explanation from their departments. The Chancellor and the Ombudsman had extremely broad powers in prosecuting someone for abuse of authority, for example.

17. With regard to the total number of prisoners, Finland was a special case in the industrialized western societies, nearly all of which had seen their prison population increase greatly. On the contrary, Finland's prison population had decreased from some 7,000 prisoners in the 1960s to 3,300 at the present time. Admittedly, that phenomenal development was explained in part by the fact that the prison population had initially been very high. Another interesting fact was the extremely small number of remand prisoners, since they constituted only about 8 per cent of the prison population, whereas the proportion was from 30 to 40 per cent in most countries. That was an important point, since it was those persons who generally had the greatest difficulties in the prison system, the uncertainty in which they found themselves making it more difficult for them to adapt.

18. Very few asylum-seekers (less than a dozen) were detained pending a decision on their case. It was considered preferable to place them in prison rather than in police premises, where material conditions were not appropriate. It was true that placing them in prison establishments, which was the practice in many countries, was not a very satisfactory solution.

19. The CHAIRMAN invited the Committee to comment on the report and the oral presentation of the Finnish delegation.

20. Mr. YAKOVLEV (Country Rapporteur) noted that democratic stability and order were part of the way of life in Finland. Hence it was not surprising that the crime rate and number of prisoners there were so low. Moreover, the Finnish Government, far from giving itself a good mark, always demonstrated its desire to further improve the implementation of the Convention. Its second periodic report was entirely in accordance with the Committee's guidelines and replied to all the questions raised during consideration of the initial report. Not only had legislative measures been taken by Finland but no case of torture had been reported to the Committee.

21. It was gratifying that the revised Constitution now contained an explicit prohibition of torture and other degrading treatment. Moveover, the "principle of normality", whereby prison conditions should resemble as closely as possible those in society at large, was set out in law. Another source of satisfaction, the Preliminary Investigations Act, detailed the methods to be followed during interrogations. Lastly, the establishment of the Rehabilitation Centre for Torture Victims also deserved mention as a concrete and not merely a theoretical measure. A number of questions might, however, be raised, beginning with one close to the Committee's heart, that of the definition of torture. The Convention was quite clear on the subject: it was torture inflicted by a public official or other person acting in an official capacity. That definition could not be associated with that of acts of violence, which was too general. In each case, the agent and the intention differed greatly.

22. With regard to the proposed reform of the preventive detention system (para. 33 of the report), he was not certain about the compatibility between the measures envisaged and the provisions of the Convention and would like simply to be reassured on that subject. The Finnish Human Rights League had questioned a number of provisions of the Immigration Act of 15 July 1993, which included the idea of a list of "safe" countries. He wondered about the exact function of that list. It was his understanding that, in the event of a request for asylum, if the applicant was a national of a country on that list, his request would be rejected immediately. It would be necessary to know what criteria were used to include a country on the list as well as any possible legal guarantees for the persons in question. The Finnish Human Rights League also referred to a number of cases of police brutality. He would welcome the assurance that any complaint involving the police would be the object of an inquiry conducted by authorities other than the police itself.

23. Furthermore, it seemed that there was some discrimination against ethnic minorities in prisons and that Romanies were the primary victims. The interest shown by the Parliamentary Ombudsman in that question seemed, however, to indicate the Government's recognition of the problem and its determination to resolve it.

24. He could not fail to conclude his statement without paying tribute to Finland on the exemplary way in which it respected the Convention.

25. Mr. REGMI (Alternate Country Rapporteur), also congratulating Finland on a report which was outstanding, said that he wished to comment on the importance the Committee attached to incorporating a definition of torture in national legislation. A country like Finland, which was in the forefront of those that upheld human rights, must set an example and provide expressly for a definition of torture in its national legislation.

26. He was gratified at the emphasis placed on the principle of universality, whereby a foreigner could be tried under Finnish law even if the act was not punishable where it had been committed. The Code of Judicial Procedure, on the other hand, struck him as a little ambiguous so far as the principle of free weighing of evidence was concerned and he would like to have some clarification in that regard.

27. Solitary confinement should not exist at all, in his view. From the practical standpoint, however, he would like to know specifically whether a detainee held in solitary confinement could have visits from his relatives and consult a doctor of his choice. He welcomed a number of measures taken with a view to conducting a campaign against and combating firmly the practice of torture. He also welcomed the entry into force of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the establishment of a centre for Torture Victims but he was concerned at the allegations by the Finnish Human Rights League concerning the situation of minorities in Finnish prisons. It seemed that the police along with prison warders were guilty of showing signs of racism particularly against the Romanies. He trusted that question would receive the necessary attention and would like to be informed of the authorities' intentions in that connection.

28. He would also like to have more detailed information concerning article 14 of the Convention and in particular would like to know what was the maximum amount of compensation that would be paid to the beneficiaries of a person who died as a result of torture.

29. Mr. BURNS, congratulating the Finnish delegation on its excellent report, said that he found it hard to make the slightest criticism. He was particularly impressed by the systematic reduction in the prison population over the past 20 years. He would, however, like to revert to the question of the definition of torture. The bill amending the basic provisions of the Constitution, which provided for the incorporation in the Constitution of a prohibition on torture, was a very praiseworthy initiative that would however have been further improved by the incorporation in the Code of Criminal Procedure of a special definition of the crime of torture.

30. As to free weighing of evidence, paragraph 29 of the report was, in his view, very ambiguous and he would like to have an explanation of how it should be interpreted. It was important to know whether the courts had a discretion in the matter inasmuch as article 15 of the Convention prohibited the use in evidence of a statement obtained by torture.

31. With regard to paragraph 46 (b) of the report, he would like to know precisely what administrative custody involved as well as the conditions of such custody. Further, paragraph 78 of the report stated that a person who had been detained or arrested "could be provided with an opportunity to select an attorney", which could suggest that the authorities had a discretion in the matter. What were the conditions for the exercise of the right to counsel in such circumstances?

32. Mr. SØRENSEN said that he too would stress the value of having a definition of torture. For instance, it would be easier to indict a torturer who had operated abroad and then went to Finland if the act of torture constituted a specific criminal offence.

33. Paragraph 77 of the report was somewhat ambiguous and he would like to know what happened in practice when there was a decision to delay notification of the relatives of an arrested person. It was a matter of concern to him, as a medical man, that a police official could be present at medical examinations. Save where there was a real and objective risk - for instance,

in the case of hostage taking - the doctor should remain alone with the person concerned to preserve the privileged relationship between doctor and patient. With regard to paragraph 102 of the report, he would like to know whether the Act on Patient Rights applied to patients in custody as well. He would also like confirmation that, under the Mental Health Act, psychiatric treatment could be imposed only when all of the conditions set forth in paragraphs 105 (a), (b) and (c), not just one of them, had been met.

34. Mr. PIKIS said that he would like to have further clarification about the possibility, as referred to in paragraph 26 of the core-document (HRI/CORE/1/Add.59), of instituting criminal proceedings against an official who infringed human rights. He too would emphasize the difference between "assault" and an act of torture, both in nature and in intensity. In the absence of any provisions on the value of illegally obtained evidence, he would like to know on the basis of which criteria and procedures a judge or court held statements obtained by torture to be invalid.

35. Since confinement in isolation could easily lead to violations of the Convention, it would be useful to know in which cases and for how long a prisoner could be isolated from other detainees. Under Finnish law, a person who had been detained or arrested had the right to converse in private with his attorney unless there was a justified reason to believe that that right would be abused (para. 78 of the report). What abuses were contemplated and could the person concerned appeal against such a decision?

36. The report referred in paragraph 90 to a commission appointed to investigate offences allegedly committed by the police. It would be interesting to have examples of cases dealt with by that commission. He wondered whether the accused had the right to remain silent and, if so, whether he was informed of that right. He would also like to know whether the Mental Health Act (para. 105 of the report) allowed for the possible intervention of the judicial authorities and whether there was any risk that a person who suffered from mental illness might be deprived of his rights.

37. Mrs. ILIOPOULOS-STRANGAS said that she had welcomed with satisfaction the report and oral presentation of the Finnish delegation. Referring to paragraphs 135 and 136 of the report, she asked whether the power conferred upon police officer to decide on the administrative custody of a foreigner was entirely discretionary or whether the Immigration Act laid down conditions and guarantees. Were foreigners held in the same places as Finnish citizens, could they express themselves in their own language and did they have legal aid?

38. The CHAIRMAN asked the Finnish delegation whether, even though allegations of torture were extremely rare in its country, Finland could contribute - if it did not already do so - to the United Nations voluntary contribution fund for victims of torture. He thanked it for its attention and invited it to answer the questions raised at the following meeting.

39. The Finnish Delegation withdrew.

The (public) meeting was suspended at 11.45 a.m. and resumed at 12.35 p.m.*

Second periodic report of Senegal (continued) (CAT/C/17/Add.14): Conclusions and recommendations of the Committee

40. At the invitation of the Chairman, Mr. Youssoupha Ndiaye, Mr. Amadou Diop, Mrs. Maîmouna Diop, Mr. Mamadou Lamine Fofana, Mr. Mandiougou Ndiaye, Mr. Ibou Ndiaye and Mr. El Hadji Abdoul Aziz Ndiaye (Senegal) took seats at the Committee table.

41. The CHAIRMAN invited Mrs. Iliopoulos-Strangas (Country Rapporteur) to introduce the conclusions and recommendations adopted by the Committee at a private meeting regarding the report submitted by Senegal.

42. Mrs. ILIOPOULOS-STRANGAS (Country Rapporteur) read out the following text:

"The Committee considered the second periodic report of Senegal (CAT/C/17/Add.14) at its 247th and 248th meetings on 1 May 1996 (see CAT/C/SR.247 and 248) and adopted the following conclusions and recommendations.

A. Introduction

The Committee welcomes the submission by Senegal of its second periodic report and its core document and thanks the delegation for its oral introduction and for its frank collaboration, as demonstrated by its constructive dialogue with the Committee.

B. Positive aspects

The Committee notes with satisfaction Senegal's firm commitment to the defence of human rights, demonstrated, inter alia, by its ratification of a series of international treaties concerning human rights, and the modernization of legislation on the subject which is now in progress. In addition, the State party's frank collaboration with the Committee shows its willingness to fulfil the obligations it assumed when ratifying the Convention.

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* The summary record of the closed meeting, held from 11.50 a.m. to 12.35 p.m., appears as document CAT/C/SR.249/Add.1.

The Committee notes as a positive aspect that the status accorded by the Senegalese Constitution to international treaties ratified by Senegal is higher than that of domestic law.

The Committee welcomes recent developments in Senegal, as set forth in the 'joint communiqué', by the delegation of the Government and non-governmental organizations of 13 March 1996, announcing the establishment of a periodic dialogue and the establishment of a human rights unit.

The Committee also welcomes the fact that the Senegalese delegation, on behalf of the authorities of the State party, has undertaken to provide training for people occupying the posts listed in article 10 of the Convention, including doctors and to implement the procedure regarding the declaration provided for under article 22 of the Convention.

C. Factors and difficulties impeding implementation

At the normative level, the Committee notes the absence of any regulations to render possible the effective implementation of the Convention.

The Committee notes that the conflict in Casamance sometimes impedes the effective implementation of the Convention.

D. Subjects of concern

The Committee is distressed by the numerous cases of torture that have been brought to its attention by non-governmental organizations of established credibility, but also referred to in paragraphs 12, 37 and 103 of the report of the State party.

While taking into account the particular problem of Casamance, which is threatening the security of the State, the Committee recalls that a democracy must, whatever the circumstances, ensure that only legitimate means are used to protect the security of the State, peace and stability.

The Committee is concerned that, in its report, the State party invokes a discrepancy between international and internal law to justify granting impunity for acts of torture committed following the enactment of the amnesty laws.

The Committee is doubtful whether the provisions in force in Senegal can effectively ensure full respect for the fundamental rights of persons in police custody.

E. Recommendations

The Committee recommends that the State party should, during its current legislative reform, consider explicitly introducing in national legislation the following provisions:

(a) The definition of torture set forth in article 1 of the Convention and establishment of torture as a specific offence in accordance with article 4 of the Convention; which would permit, inter alia, the achievement of universal jurisdiction as provided for in articles 5 et seq. of the Convention.

(b) A blanket prohibition of torture, with the stipulation that no exceptional circumstances should be invoked to justify torture, in accordance with article 2, paragraph 2, of the Convention.

(c) A provision expressly stipulating that an order from a superior officer or from a public authority may not be invoked as a justification for torture, in accordance with article 2, paragraph 3, of the Convention.

(d) An explicit prohibition of torture to obtain evidence, in accordance with article 15 of the Convention, and prohibition of any statement which is established to have been obtained in such a way and invoked as evidence in any proceedings.

The Committee recommends that all crimes referred to in article 4, paragraph 1, of the Convention be made subject to rigorous and speedy ex officio investigation and prosecution by the competent judicial and prosecution authorities.

The Committee recommends that any person accused of an offence under the criminal law should be subject to an objective investigation, and, in the event that his responsibility is established, handed over to the competent authority as soon as possible.

The Committee recommends that article 79 of the Senegalese Constitution, establishing the precedence of international treaty law ratified by Senegal over internal law be implemented unreservedly. It also believes that the amnesty laws in force in Senegal are inadequate to ensure the implementation of certain provisions of the Convention.

The Committee hopes that the allegations made by the non-governmental organizations will be investigated and the results transmitted to the Committee.

The Committee would welcome a contribution, however symbolic, from the Senegalese Government to the United Nations Voluntary Fund for Victims of Torture."

43. The CHAIRMAN invited the delegation of Senegal to comment on the Committee's conclusions and recommendations.

44. Mr. DIOP (Senegal) thanked the Committee for giving the Government of Senegal the opportunity to express its views and for its suggestions, which would help the country to adopt, and improve, its legal provisions in the ever-changing field of human rights. Senegal solemnly reaffirmed that it was committed to the Committee's work and intended to honour its commitments, in the light of the Committee's conclusions and in view of primacy of international law over internal law. Senegal, which was keen to modernize its legislation, had already started work on several reforms which tallied with the Committee's recommendations in several important areas, including: the definition of torture, its characterization in criminal law of the conduct of investigations and procedures governing police custody, on which guidelines had just been adopted.

45. The CHAIRMAN thanked the delegation of Senegal for its cooperation and frankness.

46. The delegation of Senegal withdrew.

The meeting rose at 1 p.m.